

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

3B'S LAND & GRAVEL, LLC,  
  
Plaintiff,  
  
v.  
  
UNITED STATES OF AMERICA,  
  
Defendant.

CASE NO. C13-6009 BHS

ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS

This matter comes before the Court on Defendant United States of America's ("Government") motion to dismiss (Dkt. 41). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On September 6, 2012, Plaintiff 3B's Land & Gravel ("3Bs") filed a complaint in the District of Oregon against the Government. Dkt. 1. 3Bs asserts claims for declaratory relief, inverse condemnation in violation of the Fifth and Fourteenth

1 Amendments, taking in violation of the Fifth and Fourteenth Amendments, and quiet  
2 title. *Id.*

3 On November 22, 2013, the case was transferred to this district. Dkt. 29.

4 On April 17, 2014, the Government filed a motion to dismiss for lack of  
5 jurisdiction and failure to state a claim. Dkt. 41. On May 5, 2014, 3Bs responded. Dkt.  
6 42. On May 9, 2014, the Government replied. Dkt. 43.

## 7 II. DISCUSSION

8 Even if the Court has jurisdiction to hear 3Bs' claims<sup>1</sup>, these claims are barred by  
9 the doctrine of judicial estoppel. The Ninth Circuit has held that when a party fails to  
10 disclose a potential cause of action in bankruptcy, it cannot later assert that claim in  
11 another court. *See Hamilton v. State Farm & Cas. Co.*, 270 F.3d 778, 783 (9th Cir.  
12 2001); *Rose v. Beverly Health & Rehab. Servcs.*, 295 Fed. Appx. 142, 144 (9th Cir.  
13 2008).

14 Judicial estoppel will be imposed when the debtor has knowledge of  
15 enough facts to know that a potential cause of action exists during the  
16 pendency of the bankruptcy, but fails to amend his schedules or disclosure  
17 statements to identify the cause of action as a contingent asset.  
18 *Hamilton*, 270 F.3d at 784 (citing *Hay v. First Interstate Bank of Kalispell, N.A.*, 978  
19 F.2d 555, 557 (9th Cir. 1992)).

20 In this case, 3Bs argues that it disclosed its claim against the Government to its  
21 creditors. The bankruptcy record, however, shows that 3Bs only disclosed that this

---

21 <sup>1</sup> The Court likely does have jurisdiction to hear 3Bs' quiet title claim because the claim  
22 addresses the scope of easements and likely accrued when 3Bs was given notice of the  
Government's interest in 2006.

1 dispute may inhibit or delay its ability to perform under the reorganization plan. *See* Dkt.  
2 43, Exh. C § 5.14(G). 3Bs clearly had knowledge of the facts that a potential cause of  
3 action existed, yet failed to disclose the claim as a contingent asset. Under these facts,  
4 the Court is bound to apply the doctrine of judicial estoppel to bar 3Bs' claims.  
5 *Hamilton*, 270 F.3d at 784.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that the Government's motion to dismiss (Dkt.  
8 41) is **GRANTED**.

9 Dated this 4th day of June, 2014.

10  
11 

12 BENJAMIN H. SETTLE  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22